

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NICOLE LOGAN, et al.,
Plaintiffs,

v.

CITY OF PULLMAN POLICE
DEPARTMENT, et al.,
Defendants.

No. CV-04-214-FVS

ORDER GRANTING DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS

BEFORE THE COURT is Defendants' Motion for Judgment on the Pleadings (Ct. Rec. 313). Plaintiffs are represented by Darrell Cochran and Thaddeus Martin. Defendants are represented by Andrew Cooley, Stewart Estes, Kim Waldbaum and Richard Jolley.

I. BACKGROUND

Plaintiffs' Amended Complaint for Injunctive Relief and Damages (Ct. Rec. 137) names the "City of Pullman Police Department" as a defendant. The Amended Complaint alleges that the "City of Pullman Police Department" is a municipal entity existing pursuant to and under the laws of the City of Pullman in the State of Washington. Amended Complaint, ¶ 4.2.1. The Amended Complaint also alleges that the "Pullman Police Department is a political subdivision in the State of Washington and constitutes a "person" for purposes of 42 U.S.C. § 1983 and § 1988." *Id.*, ¶ 6.1.2.

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

1 Pursuant to Federal Rule of Civil Procedure 12(c), Defendant City
2 of Pullman Police Department moves for dismissal of the claims against
3 it on the grounds that it is not a legal entity subject to suit.

4 **II. DISCUSSION**

5 42 U.S.C. § 1983 applies to the actions of "persons" acting
6 under the color of state law. It is beyond dispute that a
7 municipality may be sued as a "person" under 42 U.S.C. § 1983. *Monell*
8 *v. Dep't of Social Servs.*, 436 U.S. 658, 690, 98 S.Ct. 2018, 2035, 56
9 L.Ed.2d 611 (1978); *Luthern Day Care v. Snohomish County*, 119 Wash.2d
10 91, 118, 829 P.2d 746 (1992). However, "neither a state nor its
11 officials acting in their official capacities are "persons" under §
12 1983. *Wills v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109
13 S.Ct. 2304, 105 L.Ed.2d 45 (1989). "Moreover, municipal police
14 departments and bureaus are generally not considered "persons" within
15 the meaning of 42 U.S.C. § 1983." *United States v. Kama*, 394 F.3d
16 1236, 1239-40 (9th Cir. 2005) (citing *Hervey v. Estes*, 65 F.3d 784
17 (9th Cir. 1995) (holding that TNET, an intergovernmental association
18 composed of the Tacoma Police Department, the Summer Police
19 Department, Pierce County Sheriff's Department, Pierce County
20 Prosecutor's Office, and the Washington State Patrol, with authority
21 to investigate suspected drug operations, was not an entity or person
22 subject to suit under Section 1983 because there was insufficient
23 evidence to show TNET intended to create a separate legal entity
24 subject to suit), *Dean v. Barger*, 951 F.2d 1210, 1214 (11th Cir. 1992)
25 (recognizing that sheriffs' departments and police departments are not
26 usually considered legal entities subject to suit) and *Smith-Berch*,

1 *Inc., v. Baltimore County*, 68 F.Supp.2d 602, 626-27 (D.Md. 1999)
2 (citing cases for proposition that municipal departments, including
3 police departments, are not persons within the meaning of 42 U.S.C.
4 § 1983)); *see also West By and Through Norris v. Waymire*, 114 F.3d 646
5 (7th Cir. 1997) (assuming that Town's Police Department would not be
6 appropriate defendant in 1983 action because it's not a an entity
7 separate from the Town); *Ricketts v. City of Hartford*, 74 F.3d 1397,
8 1400 n. 1 (2d Cir. 1996) (presuming that Hartford Police Department
9 would not be appropriate defendant in Section 1983 action separate and
10 independent from City of Hartford); *Collins v. West Hartford Police*
11 *Dept.*, 380 F.Supp.2d 83, 92 (D.Conn. 2005) ("the municipality itself,
12 not an agency or instrumentality of the municipality, is a proper
13 legal entity subject to suit under Section 1983."); *Darby v. Pasadena*
14 *Police Dep't*, 939 F.2d 311, 313-14 (5th Cir. 1991) (finding that Texas
15 county sheriffs and police departments are generally not legal
16 entities capable of being sued).

17 Furthermore, the Pullman Police Department does not have the
18 capacity to be sued under state law. The "capacity to sue or be sued
19 shall be determined by the law of the state in which the district
20 court is held[.]" Fed.R.Civ.P. 17(b). The Washington Legislature has
21 waived sovereign immunity for all "local governmental entities." RCW
22 4.96.010. This term is narrowly defined to include "a county, city,
23 town, special district, municipal corporation ... quasi-municipal
24 corporation, or public hospital." RCW 4.96.010(2); *see also*, RCW
25 39.50.010 (defining municipal corporation to include any city, county
26 town, and separately created "districts" such as school districts,

1 park districts and fire protection districts). Plaintiffs have failed
2 to show that the City of Pullman ever granted its Police Department
3 the capacity to engage in separate litigation.

4 The Court concludes that the Pullman Police Department is not a
5 "person" subject to suit under 42 U.S.C. § 1983 and it does not have
6 the capacity to sue or be sued under Washington state law.

7 Accordingly,

8 **IT IS HEREBY ORDERED** that Defendants' Motion for Judgment on the
9 Pleadings (Ct. Rec. 313) is **GRANTED**. All claims against the City of
10 Pullman Police Department are **DISMISSED**.

11 **IT IS SO ORDERED**. The District Court Executive is hereby
12 directed to enter this Order and furnish copies to counsel.

13 **DATED** this 24th day of April, 2006.

14
15 s/ Fred Van Sickle
Fred Van Sickle
16 United States District Judge
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